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**RECEIVED**  
June 09, 2021  
**Commission on  
State Mandates**

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June 9, 2021

**VIA CSM E-FILE DROPBOX**

Heather Halsey  
Executive Director  
Commission on State Mandates  
908 9th Street, Suite 300  
Sacramento, CA 95814

**Re: Comments to Draft Proposed Decision  
California Regional Water Quality Control Board, Los Angeles  
Region Order No. R4-2010-0108, 11-TC-01**

Ms. Halsey:

The County of Ventura and Ventura County Watershed Protection District (Claimants) hereby file these Comments to the Commission's Draft Proposed Decision, issued May 19, 2021, regarding the above-referenced Test Claim.

Additionally, pursuant to Title 2, section 1187.9 of the California Code of Regulations, the Claimants hereby join the Los Angeles Regional Water Quality Control Board in requesting that the hearing date for this matter be postponed from July 23, 2021 to a later scheduled Commission meeting. On June 4, 2021, the Los Angeles Regional Water Quality Control Board publicly noticed July 23, 2021 as a hearing date for consideration of proposed issuance of Regional Phase I Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit for the Los Angeles Region, which would apply to the Claimants.<sup>1</sup> Kahn, Soares & Conway, LLP is special legal counsel to the Claimants and represents them in both proceedings. Special legal counsel and Claimant representatives are unable to attend both proceedings simultaneously.

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<sup>1</sup> Exhibit A, Los Angeles Regional Water Quality Control Board, Notice of Public Hearing, p. 1.

## **I. INTRODUCTION**

The Test Claim filed by Claimants on August 26, 2011, seeks a subvention of funds for six mandates imposed by Order No. R4-2010-0108, a municipal stormwater permit adopted by the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) on July 8, 2010 (2010 Permit).

The issue presented is whether Claimants timely filed their Test Claim pursuant to Government Code section 17551(c), which requires claims “be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring costs as a result of a statute or executive order, whichever is later.” (Cal. Gov. Code § 17551(c).) As explained below, the 1989 NPDES Memorandum of Agreement Between the U.S. Environmental Protection Agency and the California State Water Resources Control Board (MOA) *delayed* the effective date of the 2010 Permit by 50 days from July 8, 2010 to August 27, 2010. The Test Claim, filed August 26, 2011, was therefore timely for purposes of section 17551(c).

In its Draft Proposed Decision issued May 19, 2021 (Draft Decision), Commission Staff (Staff) contends the Test Claim was untimely because the limitations period commenced on August 5, 2009, the alleged effective date of a prior stormwater permit adopted by the Regional Board on May 7, 2009, as Order No. R4-2009-0057 (2009 Permit), or at the latest, July 8, 2010, the alleged effective date of the 2010 Permit; that Claimants’ reliance on the MOA’s 50-day delay is misplaced, and that the MOA is inapplicable to the issue of timeliness. (Draft Decision, p. 21.)

As explained below, Staff’s arguments are without merit. First, the 2009 Permit was not properly adopted until after it was reconsidered and re-adopted by the Regional Board as the 2010 Permit and is, therefore, irrelevant for purposes of section 17551(c)’s limitations period. The Test Claim is based on the Regional Board’s re-adoption of the permit on July 8, 2010, and its proper effective date. Additionally, pursuant to the Federal Water Pollution Control Act (Clean Water Act), the MOA controls the 2010 Permit’s effective date for purposes of section 17551(c), and any permit provision contrary thereto is superseded. The 2010 Permit ultimately took effect August 27, 2010, and Claimants’ Test Claim filed August 26, 2011, was timely as a result.

## **II. CLAIMANTS’ TEST CLAIM WAS TIMELY FILED**

### **A. The 2009 Permit and Its Effective Date Do Not Apply to the Test Claim.**

The crux of Staff’s argument is that the 2009 Permit “*first* ordered the requirements pled by the claimants and was never stayed or set aside . . . [and the 2010 Permit] did not change the requirements pled by the claimants other than extending some due dates.” (Draft Decision, pp. 21, 37.) However, the Regional Board *voluntarily* agreed to remand the adoption of the 2009 Permit at the State Water Resources Control Board’s

(State Board) request.<sup>2</sup> Reconsideration was necessary “in light of substantial new information submitted, confusion regarding the record, and other procedural irregularities” in connection with the adoption of the 2009 Permit, but the State Board could not complete its own review within the statutory deadline.<sup>3</sup> The Regional Board accepted the State Board’s request to remand the matter, thereby negating the need for the State Board to order a stay of the 2009 Permit. The issue for reconsideration was whether to affirm the initial adoption of the 2009 Permit, strongly suggesting the 2009 Permit and its provisions were invalid until they were properly re-adopted on July 8, 2010, after the Regional Board adhered to notice and comment requirements. This is evidenced by the Regional Board’s Notice of Public Hearing dated May 5, 2010, which indicates the 2009 Permit was treated as an “original draft permit” being considered for adoption on July 8, 2010.<sup>4</sup> (*See* Draft Decision, pp. 21-22 [that the due dates for the test claim provisions were extended also suggests the provisions of the 2009 Permit were not valid until they were properly adopted on July 8, 2010].)

Staff’s argument also ignores the crucial fact that the 2010 Permit was adopted as a “reconsideration” of the 2009 Permit as opposed to an “amendment” or “modification”. The Regional Board’s reconsideration of the 2009 Permit was done wholesale and the permit was re-adopted in its entirety. (*See* 40 C.F.R. § 124.5 [permits may be modified or, *alternatively*, revoked and reissued under the Clean Water Act, but not both]. If the State and Regional Boards (Water Boards) sought only a narrow modification of the 2009 Permit, as suggested by Staff, revocation and reissuance of the permit would have been unnecessary. (Draft Decision, p. 37.) Therefore, the 2010 Permit is neither a modification of the 2009 Permit nor a completely new permit. Instead, the Regional Board effectively converted the 2009 Permit into the 2010 Permit after the State Board called for its reissuance. (40 C.F.R. § 122.62 [“When a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.”].) Accordingly, the 2009 Permit no longer has any significance as an official or applicable permit under the Clean Water Act.

In addition, the 2009 Permit is irrelevant for purposes of timeliness under Government Code section 17551(c), which hinges on the effective date of the executive order being pled for reimbursement. (Gov. Code § 17551(c).) Staff and the Water Boards allege the 2009 Permit took effect August 5, 2009, and remained in full force and effect until July 8, 2010, and, therefore, the Test Claim (filed August 26, 2011) was not timely filed as required by Government Code section 17551(c). (Draft Decision, pp. 18, 21, 37.) This argument fails for reasons already discussed. Moreover, Claimants filed their Test Claim on the final 2010 Permit, an “executive order” (Gov. Code § 17516) with its own

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<sup>2</sup> State Board’s Administrative Record for the Petition on the 2009 Ventura County MS4 Permit, filed August 23, 2017 (“SWRCB AR”), Exhibit E, Bates No. SB-AR-593 (Regional Board Letter, March 11, 2010, p. 1).

<sup>3</sup> SWRCB AR, Exhibit E, Bates No. SB-AR-590 (State Board Letter, March 10, 2010, p. 2).

<sup>4</sup> Joint Test Claim Filed by County of Ventura, et al. on August 26, 2011, revised on May 17, 2017 (“Joint Test Claim AR”), Volume 3, Tab 8, pp. 1099-1101 (Regional Board Notice, May 5, 2010, pp. 1-3).

“effective date” for purposes of section 17551(c).<sup>5</sup> That the final 2010 version of the permit imposes requirements originally found in the 2009 version of the permit is irrelevant for purposes of section 17551(c) because the 2009 version was in reality determined by the Water Boards to not be properly adopted and was rescinded in its entirety by the Regional Board upon reconsideration.<sup>6</sup> The Test Claim was filed on the final permit and, therefore, section 17551(c)’s statute of limitations did not commence until the effective date of that executive order: August 27, 2010 (discussed below).

The fact that the reconsideration hearing was noticed as narrow in scope, and that only limited comments and evidence would be accepted does not change this analysis. Further, any suggestion that Claimants should have filed the Test Claim during reconsideration is without merit as there was a risk that the permit would be substantively modified during reconsideration. The Regional Board received significant public comment from stakeholders, several of which urged the Board to modify the permit from its 2009 version. The Board was not necessarily bound by the terms of the notice and could have changed the scope of reconsideration and amended the notice if desired. Filing a test claim on the 2009 version before or during reconsideration would have been premature because the specific mandates in the permit reasonably could have changed upon reconsideration. Staff recognizes this reasonable possibility, noting that a change to the permit *may* or *could* have happened. (*See* Draft Decision, p. 37.) Undoubtedly, had Claimants filed a test claim on the 2009 version, the Water Boards would have argued it was untimely because it was filed in advance of the final 2010 version.

#### **B. The Memorandum of Agreement Between the U.S. EPA and State Water Board Sets the Effective Date of the 2010 Permit on August 27, 2010.**

Claimants timely filed their Test Claim on August 26, 2011, because the 2010 Permit, though adopted by the Regional Board on July 8, 2010, was not deemed effective by operation of law until 50 days after the adoption date of the permit: August 27, 2010. This 50-day delay between the adoption date and the effective date of a permit is prescribed by the MOA that allows the Water Boards to administer the Clean Water Act in California.

Staff and the Water Boards contend that Claimants’ reliance on the MOA is misplaced, asserting the MOA is merely a contract between those parties that governs

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<sup>5</sup> Staff and the Water Boards contend “[t]he Commission is not the proper forum for Claimants to challenge the effective date.” (Draft Decision, p. 18.) The Commission is the *only* proper forum available to dispute the timeliness of a test claim pursuant to section 17551(c). The relevance of the “effective date” is limited to the timeliness issue under the Commission’s procedures. (Gov. Code § 17550 et seq.) Staff concedes as much, stating “submitting a test claim to the Commission in accordance with Government Code section 17500 et seq. is the exclusive method for resolving whether a cost is or is not a reimbursable state mandate.” (Draft Decision, p. 20.)

<sup>6</sup> Joint Test Claim AR, Volume 1, Tab 1, p. 254 (2010 Permit, Finding R.1, p. 124).

their working relationship. (Draft Decision, pp. 18, 10-11.) This characterization severely oversimplifies the nature of the MOA and its legal effect on the issue presented.

Under the Clean Water Act, the United States Environmental Protection Agency (EPA) is empowered to administer the National Pollutant Discharge Elimination System (NPDES) program throughout the country. (33 U.S.C. § 1341(a).) However, the EPA may delegate this authority if a state submits and requests approval of its own permitting program and that program meets the federal requirements. (33 U.S.C. § 1342(b).) For a state to administer section 402 of the CWA, pertaining to NPDES permits, it must execute a MOA between the state's program director and the EPA's Regional Director. (40 C.F.R. § 123.24(a).) This MOA outlines the terms upon which the EPA delegates its statutory authority to administer the NPDES program, including the authority to issue permits, to the state for administration. (*See* 40 C.F.R. § 123.24(a).) Even after an MOA has been executed and the state program has been approved, the EPA retains authority to oversee the state program. (33 U.S.C. § 1342(c); 40 C.F.R. § 123.24; *see also Akins v. Ohio Dept. of Agriculture* (6th Cir. 2016) 809 F.3d 868, 871 ["The U.S. EPA may approve a state to administer a state-NPDES program, but the U.S. EPA retains authority to supervise it and withdraw approval."].) Accordingly, the 1989 MOA is not just a contract between the parties, but rather a delegation of EPA's statutory power governing the issuance of NPDES permits as required by the Clean Water Act.<sup>7</sup> (33 U.S.C. § 1314(i)(2).)

Here, the 1989 MOA controls the distribution of NPDES program responsibilities between the EPA, State Board, and Regional Boards, including procedures governing EPA's review and comment on draft and adopted permits.<sup>8</sup> (40 C.F.R. §§ 123.1(f), 123.44(a)(1) [MOA "shall provide a period of time (up to 90 days from receipt of the proposed permits) to which the [EPA] may make . . . objections to . . . proposed permits."].) As noted by Staff, the MOA delays the effective date of an adopted permit by 50 days if (1) EPA does not object to the permit and (2) the permit has garnered significant public comment and/or has changed during the approval process. (Draft Decision, pp. 40-41.) The 2010 Permit fits both criteria,<sup>9</sup> which Staff does not dispute.

Instead, Staff argues that the MOA does not control the effective date. First, Staff claims "[t]he MOA does *not* provide notice to the permittees of the effective date of an NPDES permit, which is required by the Regional Board when it adopts a quasi-judicial

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<sup>7</sup> Staff cites *Tyler v. Cuomo* (9th Cir. 2000) 236 F.3d 1124 to argue the MOA does not control the effective date. (Draft Decision, fn. 220.) *Tyler* does not support Staff's argument. Staff cites the court's description of a different MOA between agencies under a federal scheme as a binding contract, which is not in dispute here. Moreover, *Tyler* supports Claimants' argument that the MOA controls the effective date. (*See Tyler*, 236 F.3d at 1134 [federal law controls MOA interpretation when entered under a federal scheme].)

<sup>8</sup> Joint Test Claim AR, Exhibit A, p. 78 (MOA, Section II, A., p. 7).

<sup>9</sup> Claimants' Rebuttal Comments filed January 2, 2018, pp. 3-4.

order.”<sup>10</sup> (Draft Decision, p. 43.) Staff claims all notices indicate the 2010 Permit became effective on July 8, 2010, with no reference to a 50-day delay, and relies on Finding G4 of the permit which states the permit “shall take effect on (Order adoption date) provided the [EPA] has no objections.” (Draft Decision, p. 38, quoting the 2010 Permit.) This argument ignores the MOA’s control over the effective date and EPA’s right to review a permit beyond its adopted date. (*See* 40 C.F.R. § 123.44.) Pursuant to Section II. F. of the MOA, EPA retained the right to review, comment, and/or object to the permit *after* it was adopted on July 8, 2010, which tolled the effective date by 50 days.<sup>11</sup> Because EPA made no objections, the permit became effective on August 27, 2010. Indeed, NPDES permits only become effective at adoption when (1) EPA does not object, (2) there has been no significant public comment, (3) no changes were made to the latest version of the draft permit sent to EPA for review, *and* (4) the State or Regional Board does not specify a different effective date at the time of adoption.<sup>12</sup> That various permit provisions have specific effective dates tied to the permit’s adoption date also does not undermine the effective date of the permit for purposes of the Test Claim.<sup>13</sup> Accordingly, the Regional Board’s failure to identify the proper effective date of the permit in accordance with the MOA cannot operate to override the requirements of the Clean Water Act.

This is similar to a situation in which NPDES permit provisions are inconsistent with federal law. In such an instance, the contrary permit provisions are superseded by federal law. (*Save our Bays & Beaches v. City & County of Honolulu* (D. Haw 1994) 904 F.Supp. 1098, 1106.)<sup>14</sup> Here, because the MOA is an extension of EPA’s statutory authority under the Clean Water Act, the MOA has a similar effect on permit provisions that conflict with its plain meaning. Accordingly, the terms of the MOA control the effective date of the 2010 Permit. (*See* 40 C.F.R. §§ 123.24 [EPA “shall not approve any [MOA] which restricts EPA’s statutory oversight responsibility.”]; 123.29 [no state permit shall be issued when EPA has objected pursuant to § 123.44]; 123.44(c) [permit issuances *must* comply with procedures required by the CWA, regulations thereunder, and the MOA]; 123.63 [EPA may withdraw program approval if a state fails to comply with the terms of the MOA required under § 123.24].)

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<sup>10</sup> Staff cites Water Code section 13263(f), *Marathon Oil Co. v. EPA* (1977) 564 F.2d 1253, 1260-1263, and *City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377, 1385. (Draft Decision, fn. 221.) Claimants do not dispute these cases insofar as they confirm the adjudicatory nature of permit proceedings. However, these cases simply do not support Staff’s argument regarding proper notice of the effective date.

<sup>11</sup> Staff argues “[t]here is no evidence in the record or in documents publicly available that the permit had a delayed effective date.” (Draft Decision, p. 43.) However, the 1989 MOA is publicly available and was filed with the Test Claim on August 26, 2011.

<sup>12</sup> Joint Test Claim AR, Exhibit A, p. 93 (MOA, Section II, F.2., p. 22).

<sup>13</sup> *See e.g.*, Joint Test Claim AR, Volume I, Tab 1, p. 212 (2010 Permit, Part 4.G.5, p. 82).

<sup>14</sup> The court explained that “[o]n July 1, 1988, the secondary treatment requirements of the [Clean Water] Act became mandatory and binding on all municipal sewage treatment works. . . . As of that date, these statutory requirements superseded any inconsistent provisions in the 1985 Kailua and Kaneohe Permits. (*Save Our Bays & Beaches*, 904 F.Supp. at 1106.)

For these reasons, the language of Finding G4 related to the effective date of the 2010 Permit, stating that the permit “shall take effect on (Order adoption date) provided the [U.S. EPA] has no objections”, is invalid to the extent it conflicts with the MOA on the effective date of the permit.<sup>15</sup> Finding G4 also leads to absurd retroactive results and further procedural confusion by requiring the permit to take effect *before* EPA has time to meaningfully consider the proposal and make objections, undermining the intent and purposes of the MOA. (See generally *Atkar v. Anderson* (1997) 58 Cal.App.4th 1166, 1179 [retroactivity is not favored in the law, and provisions will not be construed to have retroactive effect].)

Staff also argues that “[s]ince the U.S. EPA at all times expressed agreement with both the 2009 Permit, and the test claim permit, the purpose of EPA scrutiny was not furthered by the 50-day delay provision in the MOA.” (Draft Decision, p. 43.) This argument misses the point. EPA was statutorily entitled to an opportunity to object to the permit *after* it was adopted on July 8, 2010. The MOA’s 50-day delay provision applies directly to the issue presented and cannot be ignored by the Commission.

### **III. CONCLUSION**

For the foregoing reasons, the Draft Decision as proposed by Staff should be rejected, and Claimants’ Test Claim should be granted as timely pursuant to Government Code section 17551(c). I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my personal knowledge, information, or belief.

Dated: June 9, 2021



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<sup>15</sup> Joint Test Claim, Volume 1, Tab 1, p. 162 (2010 Permit, Finding G.4., p. 32).

DECLARATION OF THERESA A. DUNHAM  
RE: COMMENTS TO DRAFT PROPOSED DECISION  
ORDER NO. R4-2010-0108, 11-TC-01

I, Theresa A. Dunham, hereby declare as follows:

1. I am an attorney licensed to practice law in California and am a partner with the law firm of Kahn, Soares & Conway, LLP. I am special counsel for Claimants County of Ventura and Ventura County Watershed Protection District in this pending Test Claim proceeding, and I have personal knowledge of the matters set forth herein and, if called to testify, could testify competently thereto.

2. Exhibit A to this Declaration is a true and correct copy of the Los Angeles Regional Water Quality Control Board's ("Regional Board") Notice of Public Hearing for Proposed Issuance of Regional Phase I Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination (NPDES) Permit for the Los Angeles Region (NPDES Permit No. CAS004004), dated June 4, 2021. I downloaded this exhibit on June 8, 2021 from the Regional Board's website at the address: [https://www.waterboards.ca.gov/losangeles/water\\_issues/programs/stormwater/municipal/](https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9th day of June 2021, in Sacramento, California.

  
\_\_\_\_\_  
Theresa A. Dunham




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## Los Angeles Regional Water Quality Control Board

June 4, 2021

### NOTICE OF PUBLIC HEARING FOR PROPOSED ISSUANCE OF REGIONAL PHASE I MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR THE LOS ANGELES REGION (NPDES PERMIT NO. CAS004004)

**NOTICE IS HEREBY GIVEN** that the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board or Board) will hold a public hearing to receive public comments, and consider issuance of, the proposed Regional Phase I MS4 NPDES Permit for the Los Angeles Region (Revised Tentative Regional MS4 Permit). This notice also sets forth the procedures and processes the Los Angeles Water Board will use at this hearing and contains important deadlines.

The public hearing is scheduled as follows:

DATE: July 8, 9, 16, and 23, 2021  
 TIME: 9:00 a.m. each day  
 PLACE: No Physical Meeting Location - Video and Teleconference Meeting Only  
 Authorized by and in furtherance of Executive Orders N-29-20 and N-33-20  
 Live video and audio webcast: <https://cal-span.org> (for those that are solely interested in watching and not participating in the hearing)

If there is not a quorum on the scheduled date of this hearing, this matter will be automatically continued to the next scheduled hearing date. A continuance of this item will not automatically extend any deadlines set forth herein.

For those who wish to provide oral comments to the Los Angeles Water Board at the public hearing, please see Section VI.B. below for important information and instructions for participating remotely via the online platform. Advanced Zoom registration is required to participate telephonically or by computer.

As of the date of this public notice, the Los Angeles Water Board intends to hold this hearing in a virtual/teleconference environment only. In the event orders from the Governor of California change prior to the scheduled date of the hearing, the format of this meeting may change to also allow for in-person attendance at a physical meeting location (300 South Spring Street, Los Angeles, CA 90013). If this were to occur, an amended public notice will be promptly issued reflecting the change to the format of the meeting. Persons desiring to receive notice about changes to the date, time, location, or format of the public hearing should sign up for the Lyris e-mail list, as described in Section X. below.

LAWRENCE YEE, CHAIR | RENEE PURDY, EXECUTIVE OFFICER

## I. BACKGROUND

The federal Clean Water Act requires discharges of pollutants from MS4s (also called storm drain systems) to waters of the United States to be regulated by an NPDES permit.

The Los Angeles County Flood Control District, Ventura County Watershed Protection District, Counties of Los Angeles and Ventura, and 95 incorporated cities therein<sup>1</sup> (Permittees) discharge pollutants from their MS4s to waters of the United States. Stormwater and non-stormwater enter and are conveyed through the MS4 and discharge to surface water bodies within the Los Angeles Region. These discharges are currently regulated by the following NPDES permits - Order Nos. R4-2010-0108 (for the Ventura County Watershed Protection District, Ventura County, and incorporated cities therein), R4-2012-0175 (for the Los Angeles County Flood Control District, Los Angeles County, and incorporated cities therein except the City of Long Beach), and R4-2014-0024 (for the City of Long Beach). Each of these existing permits has expired but has been administratively extended until the effective date of a new permit regulating the MS4 discharges. The Los Angeles Water Board proposes to issue a single Regional MS4 Permit for 99 Permittees within the Los Angeles Region, which would supersede (except for enforcement purposes) the three existing MS4 permits. The proposed Regional MS4 Permit would continue to include requirements to effectively prohibit non-stormwater discharges through the MS4s, receiving water limitations, provisions implementing waste load allocations assigned to MS4 discharges in existing total maximum daily loads (TMDLs) established for impaired waterbodies in the Los Angeles Region, stormwater management programs, including “minimum control measures,” and monitoring and reporting requirements. The proposed Regional MS4 Permit would also extend the existing watershed management program framework currently in Order Nos. R4-2012-0175 and R4-2014-0024 to permittees in Ventura County.

The Los Angeles Water Board notified all Permittees in the Los Angeles Region that it intended to issue a region-wide Phase I MS4 permit in the Fall of 2017. In December 2019, Board staff released a staff working proposal of the draft permit to Permittees and key stakeholders for discussion purposes and allowed informal written comments.

The Board has held eight public workshops to consider and respond to Permittee and stakeholder comments and concerns and has also provided specific opportunities at eighteen other Board meetings and a number of Listening Sessions for Permittees and stakeholders to provide comments and feedback on permit development. Board staff has also held numerous focused meetings with Permittees and interested persons. In August 2020, Board staff released a Tentative Regional MS4 Permit for public review and comment. Permittees and interested persons were provided 105 days (from August 24, 2020 to December 7, 2020) to submit written comments. Board staff has considered all informal and formal comments in the development of the proposed permit.

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<sup>1</sup> Excluding Lancaster, Palmdale, and Avalon.

## **II. DOCUMENT AVAILABILITY**

The Revised Tentative Regional MS4 Permit and responses to timely written comments received are available on the Los Angeles Water Board's website:

[https://www.waterboards.ca.gov/losangeles/water\\_issues/programs/stormwater/municipal/index.html](https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/index.html)

Written comments received on the Tentative Regional MS4 Permit are available on the Los Angeles Water Board's FTP site using the following address and log-in credentials:

<https://ftp.waterboards.ca.gov/>

Username: rb4\_ms4

Password: a9u1sN

## **III. NATURE OF HEARING**

This proceeding will be a formal adjudicatory proceeding pursuant to section 648 *et seq.* of Title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Los Angeles Water Board, except as otherwise specified in the above-referenced regulations.

## **IV. SCOPE OF HEARING**

As this matter concerns issuance of a Regional MS4 Permit, parties and interested persons may comment on any portion of the Revised Tentative Regional MS4 Permit (i.e., Order and Attachments A through S).

As previously noted, the proposed Regional MS4 Permit continues to incorporate provisions implementing numerous TMDLs. These TMDLs are either duly adopted regulations of the Los Angeles Water Board or TMDLs established by the United States Environmental Protection Agency. The validity of these TMDLs are not an issue before the Los Angeles Water Board in this proceeding. As such, any comments or evidence attempting to challenge the validity of these TMDLs are outside the scope of this hearing and will not be considered. Comments and/or evidence concerning whether and how the Los Angeles Water Board incorporates the TMDL provisions into the proposed permit are appropriate and within the scope of this proceeding.

## **V. PARTICIPANTS TO THIS HEARING**

Participants in this proceeding are identified as either "Parties" or "Interested Persons." Designation as a Party is not necessary to participate in this proceeding. Both Interested Persons and Parties will have the opportunity to present oral comments about the issuance of the Regional MS4 Permit. Both Interested Persons and Parties may be asked to respond to clarifying questions from the Los Angeles Water Board members, counsel, or staff, or others, at the discretion of the Board.

**A. Interested Persons**

Interested persons include any person or organization that is interested in the outcome of the hearing, but who has not been designated as a party. Interested persons may present oral comments at the hearing, but they may not present evidence. Oral comments include policy statements and/or arguments about the appropriateness, wisdom, or utility of the proposal before the Los Angeles Water Board. Interested persons are not subject to cross-examination and may not cross-examine witnesses.

**B. Parties**

Parties are those persons or organizations anticipated to have the greatest interest in the outcome of the hearing. They are generally expected to take a leadership role in presenting any evidence or argument about the nature of the matter under consideration. Parties to the hearing may present evidence, or cross-examine other parties' witnesses (if any are called). Parties are subject to cross-examination about any evidence they present.

The following entities are parties to this proceeding:

1. Ventura County Watershed Protection District
2. County of Ventura
3. Cities of Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, Santa Paula, Simi Valley, Thousand Oaks, and Ventura.
4. Los Angeles County Flood Control District
5. County of Los Angeles
6. Cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bell, Bell Gardens, Bellflower, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Cañada Flintridge, La Habra Heights, La Mirada, La Puente, La Verne, Lakewood, Lawndale, Lomita, Long Beach, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier.

Any other persons or organizations who wish to participate in the hearing as a party shall request party status by submitting a written request to the Los Angeles Water Board via

email to [MS4StormwaterRB4@waterboards.ca.gov](mailto:MS4StormwaterRB4@waterboards.ca.gov) with a copy to [lvar.Ridgeway@waterboards.ca.gov](mailto:lvar.Ridgeway@waterboards.ca.gov) no later than **5:00 pm on June 21, 2021**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall also include a statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Los Angeles Water Board affect the person or organization), and a statement explaining why the parties designated above do not adequately represent their interest. Determinations will be based on whether their participation as a party will further the development of the issues before the Los Angeles Water Board. Those submitting requests for party status will be notified before the hearing whether the request is granted or denied. All parties will be notified if other parties are designated.

### **C. Los Angeles Water Board Staff**

Los Angeles Water Board staff is not a party to this proceeding. This is a proceeding to consider adoption of a permit, which does not involve investigative, prosecutorial, or advocacy functions. Staff's proposals, recommendations, and their participation in this proceeding exist for the purpose of advising and assisting the Los Angeles Water Board. Likewise, attorneys for the Los Angeles Water Board will advise and assist the Los Angeles Water Board, which includes the board members and its entire staff. Given the nature of this proceeding and the limited facts in dispute, assigning separate staff to "advocate" on behalf of a particular position would not further the development of the issues before the Los Angeles Water Board.

## **VI. PUBLIC COMMENTS**

### **A. Written Comments**

The written public comment period closed at 5:00 p.m. on December 7, 2020. The Los Angeles Water Board is not accepting any additional written comments or evidence after the written comment deadline.

### **B. Oral Comments**

Parties and interested persons are invited to present oral comments at the public hearing for the Los Angeles Water Board to consider. All persons who want to speak at the public hearing must register to participate in the public hearing no later than **5:00 p.m. on July 1, 2021** via the following Zoom registration link:

[https://us02web.zoom.us/webinar/register/WN\\_XS33odi\\_QOOXSCLpSkN6Kw](https://us02web.zoom.us/webinar/register/WN_XS33odi_QOOXSCLpSkN6Kw)

To ensure a productive and efficient hearing in which all participants have an opportunity to participate, time limits will be imposed. Oral comments may be limited to **3 minutes** for each Party or interested person, depending on the number of persons wishing to speak. Parties and interested persons seeking more than 3 minutes to present oral comments must submit a request in writing and received by email to

[MS4StormwaterRB4@waterboards.ca.gov](mailto:MS4StormwaterRB4@waterboards.ca.gov) with a copy to  
[Ivar.Ridgeway@waterboards.ca.gov](mailto:Ivar.Ridgeway@waterboards.ca.gov) no later than **5:00 pm on June 25, 2021**.

Parties and interested persons will be notified in writing prior to the date of the hearing of the amount of time they have been allocated for their oral comments. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, the opportunity to submit written comments that are part of the administrative record, the extent to which the parties and interested persons have identified unique interests, and the time available for the hearing. It is the Los Angeles Water Board's intent that reasonable requests be accommodated. Parties and interested persons with similar concerns or opinions are encouraged to choose one representative to speak and are encouraged to coordinate their presentations with each other. Repetitive comments are discouraged. At the conclusion of oral comments, the Los Angeles Water Board will close public comments.

Participants intending to use a PowerPoint presentation during the public hearing must email the file, in .ppt format, to [Gerardo.Rabelo@waterboards.ca.gov](mailto:Gerardo.Rabelo@waterboards.ca.gov) with a copy to [Ivar.Ridgeway@waterboards.ca.gov](mailto:Ivar.Ridgeway@waterboards.ca.gov), and be received no later than **12:00 p.m. (Noon) on July 6, 2021**. Please indicate in the subject line "PowerPoint Presentation – Regional MS4 Permit Public Hearing."

## **VII. ORDER OF PROCEEDINGS**

Adjudicative proceedings before the Los Angeles Water Board generally will be conducted in the following order:

1. Opening statement by the Chair summarizing the subject matter and purpose of the hearing
2. Administration of oath to persons who intend to testify
3. Los Angeles Water Board staff presentation
4. Designated parties' presentations
5. Interested persons' comments
6. Questions from the Los Angeles Water Board members, counsel, or staff to designated parties or interested persons
7. Questions from the Los Angeles Water Board members to staff or counsel
8. Deliberations
9. Los Angeles Water Board decision

While this is a formal adjudicatory proceeding, the Los Angeles Water Board does not generally require the cross examination of witnesses, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom. Parties may use their allocated time in any way they see fit, which could, for example, include witness testimony and/or cross examination of other parties.

Questions from the Los Angeles Water Board members, counsel, or staff and the time to answer them will not be charged against the party or interested person's allocated time.

The Chair of the Los Angeles Water Board will issue an Order of Proceedings on or before July 2, 2021, specifying the time allocated to each party and interested person, as well as the order of speakers.

### **VIII. OBJECTIONS TO MANNER OF HEARING**

Objections to: (a) any procedure to be used or not used during the hearing, (b) any document or evidence referenced in the Revised Tentative Regional MS4 Permit, a written comment, or response to comment, or (c) any other matter set forth in this notice, must be submitted in writing and received by email to [MS4StormwaterRB4@waterboards.ca.gov](mailto:MS4StormwaterRB4@waterboards.ca.gov) with a copy to [Ivar.Ridgeway@waterboards.ca.gov](mailto:Ivar.Ridgeway@waterboards.ca.gov) no later than **5:00 pm on June 21, 2021**.

**Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will be addressed prior to, and will not be entertained at, the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.**

### **IX. EX PARTE COMMUNICATIONS PROHIBITED**

Parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Los Angeles Water Board. An *ex parte* communication is a communication not authorized in the California Government Code, to a Los Angeles Water Board member from any person, about a pending matter, that occurs in the absence of other parties and without notice and opportunity for the parties to respond. The California Government Code generally prohibits the board members from engaging in *ex parte* communications during permitting, enforcement, or other "quasi-adjudicatory" matters. As a permitting proceeding, Los Angeles Water Board members may not discuss the subject of this hearing with any person, except during the public hearing itself or other publicly noticed workshops or meetings.

### **X. FUTURE NOTICES**

Any person desiring to receive future notices regarding the proposed Regional MS4 Permit issuance, including any changes to the date, time, format, or location of the public hearing, must sign up for the Lyrus e-mail list for this matter. To sign up for the Lyrus e-mail list, access the E-mail List Subscription form, check the box for "Region 4 SW Regional Phase I MS4 Permit", fill in the required information, and press the "Subscribe" button. The E-mail List Subscription Form is located at: [https://www.waterboards.ca.gov/losangeles/resources/email\\_subscriptions/](https://www.waterboards.ca.gov/losangeles/resources/email_subscriptions/)

**XI. LOS ANGELES WATER BOARD STAFF CONTACT**

Please direct questions to Mr. Ivar Ridgeway, Municipal Stormwater Permitting - Unit Chief, at [Ivar.Ridgeway@waterboards.ca.gov](mailto:Ivar.Ridgeway@waterboards.ca.gov) or (213) 620-2150.

## DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 11, 2021, I served the:

- **Notice of Postponement of Hearing Request Approval issued June 11, 2021**
- **Claimant's Comments on the Draft Proposed Decision and Request for Postponement of Hearing filed June 9, 2021**
- **SWRCB's and LARWQCB's Comments on the Draft Proposed Decision and Request for Postponement of Hearing filed June 9, 2021**

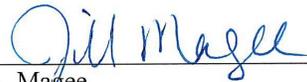
*California Regional Water Quality Control Board, Los Angeles Region,  
Order No. R4-2010-0108, 11-TC-01*

California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108, NPDES Permit No. CAS00-4002, Adopted July 8, 2010; Public Information and Participation Program: Parts 4.C.2(c)(1)(C), 4.C.2(c)(2),(6),(8), 4.C.2(d), 4.C.3(a),(b); Reporting Program and Program Effectiveness Evaluation: 4.I.1; 3.E.1(e); Special Studies: 4.E.III.3(a)(1)(D-E); Attachment F, Section F, Part 4.E.IV.4; Part 4.E.III.2(c)(3)-(4); Watershed Initiative Participation: Part 4.B; Vehicle and Equipment Wash Areas: Part 4.G.1.3(a); and Illicit Connection/Illicit Discharge Elimination: Part 4.H.1.3(a).

County of Ventura and Ventura County Watershed Protection District, Claimants

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 11, 2021 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 5/27/21

**Claim Number:** 11-TC-01

**Matter:** California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108

**Claimants:** County of Ventura  
Ventura County Watershed Protection District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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